

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**Federal-State Joint Board on Universal Service
Review of the Definition of Universal Service**

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CC Docket No. 96-45

COMMENTS OF STEPHEN A. JUDYCKI

I am employed as a director of telecommunications in higher education. My comments are based upon my experiences and observations as both a business and residential consumer of telecommunications services.

“The importance of rapid, widespread telecommunications to government, business, and society can scarcely be overstated. Because communications infrastructure coordinates and unifies a country in countless ways, the universal service concept spans the realms of economic and social policy.”¹ Mueller’s scholarly view of universal service is now several years old, but he captured the essence of universal service so completely that the quoted passage actually becomes more relevant with the passing of time.

The Federal-State Joint Board on Universal Service (“Joint Board”) has invited comment on what services, if any, should be added to or removed from the list of core services eligible for federal universal service support, and how those core services should be defined.² While I enthusiastically support the preservation and advancement of universal service in the United States of America, I have no specific recommendations regarding the addition, removal, or definition of eligible core services. However, I have some immediate concerns related to the current regulation and administration of universal service, and a longer-term concern related to the future regulation and administration of universal service. These concerns, addressed herein, are in the context of the Joint Board’s focused review of the definition of universal service.

¹ Milton L. Mueller, Jr., UNIVERSAL SERVICE, “Competition, Interconnection, and Monopoly in the Making of the American Telephone System,” (Cambridge, MA: MIT Press, 1997) p 1.

² Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service, Public Notice FCC 01-J-1 (CC Docket No. 96-45), August 21, 2001.

IMMEDIATE CONCERNS

I urge the Joint Board and the Federal Communications Commission (“Commission”) to conduct a review of current policies designed to preserve and advance universal service, and assess how well these policies have conformed to the criteria (“principles”) outlined in Section 254(b)(1)-(7) of the Telecommunications Act of 1996.³ The importance of doing this before rendering a decision to expand the eligible core services would become evident if the Joint Board and Commission identified discrepancies or inadequacies with its current application of policy.

“All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service,” according to the fourth principle.⁴ Lacking specific guidance from the Commission, most providers recover their universal service contribution by assessing a separate end-user charge in the name of *universal service*. Providers’ contribution recovery efforts were not orderly, nor were they uniform. End-user charges often are not properly supported or justified on invoices, and providers often are unwilling or unable to adequately answer end-user questions regarding these charges. Providers nearly always base their end-user charges on a factor that is higher than the factor on which the providers’ own universal service contributions are based. This practice makes it appear that providers are profiting from universal service. If true, the most egregious offenses occurred in the first quarter of 2001, when AT&T and MCI assessed end-user universal service charges that were more than 3% and 5% higher, respectively, than the Commission’s .066827-contribution factor.⁵ Providers have defended their billing practices by pointing to such factors as 1) billed revenue that cannot be collected, 2) the effect of the 6-month lag between projecting revenues and making contributions, 3) the cost of collection and administration, and 4) the need to correct for differences in the way contributions are levied on providers and collected from end-users.⁶ End-users who wish to dispute their universal service charges are limited to filing a Section 208 formal complaint with the Commission to allege overcharging by a common carrier.⁷ While some large corporations may actually do this, I’m willing to bet that the majority of end-users will not, because they will be dissuaded by the technically and legally complex process of filing and pleading and prosecuting a formal complaint. On this basis, I ask the Commission to consider a rulemaking to address this problem.

The same lack of authoritative guidance that led providers to assess an end-user charge for universal service has encouraged the proliferation of a litany of other often

³ There are currently seven universal service principles: (1) quality and rates; (2) access to advanced services; (3) access in rural and high cost areas; (4) equitable and nondiscriminatory contributions; (5) specific and predictable support mechanisms; (6) access to advanced telecommunications services for schools, health care, and libraries; (7) additional principles.

⁴ 47 U.S.C. § 254(b)(4).

⁵ Proposed First Quarter 2001 Universal Service Contribution Factor, Public Notice DA 00-2764 (CC Docket No. 96-45), December 8, 2000.

⁶ Stephen J. Rosen, “Understanding Federal Taxes, Surcharges, and Miscellaneous Fees,” ACUTA Audio Seminar, September 25, 2001.

⁷ 47 U.S.C. § 208.

misleading and consumer-unfriendly taxes, surcharges and fees,⁸ which may threaten the first principle, which states that “quality services should be available at just, reasonable, and affordable rates.”⁹ While universal service is the costliest of the “taxes, surcharges and fees” currently assessed on telecommunications, and it is the largest threat to this principle, it is not the only threat. As the Joint Board and the Commission consider whether services should be added to the list of core services eligible for federal universal service support, they should consider the impact that the totality of taxes, surcharges and fees will have on telecommunications. I urge the Joint Board and the Commission to define “just, reasonable and affordable rates.” The definition should be expressed in quantitative terms, against which the impact of anticipated cost increases spurred by regulation could be measured.

LONG TERM CONCERN

“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service,” according to the fifth principle.¹⁰ Conformance with this principle has been undermined by a multiple agency approach to universal service support, whereupon not all of the agencies are bound by the same rules, and whereby the problem has been exacerbated recently by the ever-increasing availability of and demand for broadband services. Existing universal service support mechanisms have already played a role in broadband development.¹¹ In August 2000 the Commission reported, “52 percent of schools have high-speed connections to the Internet, largely as a result of the use of the E-rate for high speed services.”¹²

My assertion that there exists a multiple agency approach to universal service is based on the fact that funding inputs and outputs for universal service(s) already extend beyond the authority Congress has granted the Joint Board and the Commission. I need only look beyond the Universal Service Administrative Corporation (“USAC”) to the programs of federal agencies that are fulfilling a universal service function. While USAC’s projection of demand and universal service for FY2001 is \$5.468B, there is also legislation in the 107th Congress that, if enacted, will provide tax credits for companies providing broadband services in rural and low income areas,¹³ and there are no fewer than 18 federal programs that will provide an estimated \$2.347B in targeted grants and

⁸ Charges that typically appear on invoices rendered by major common carriers: Universal Service Charge; Telecommunications Relay Service Fund Fee; Carrier Line Charge; Payphone Surcharge; State Sales Tax; Property Tax Surcharge; Emergency 911 Fund; Federal Regulatory Recovery Fee; Gross Receipts Tax; High Cost Fund Surcharge; Infrastructure Maintenance Fee; PUC Fee Surcharge; Relay and Communications Surcharge; Teleconnect Fund; School Utility Tax; ULTS Surcharge; Utility Gross Receipts; Deaf Trust Fund; TIF Reimbursement; 911 Poison Surcharge; City Public Service Tax; City Sales Tax; City Telecom Tax.

⁹ 47 U.S.C. § 254(b)(1).

¹⁰ 47 U.S.C. § 254(b)(5).

¹¹ Lennard G. Kruger, “Broadband Internet Access and the Digital Divide: Federal Assistance Programs,” CRS Report for Congress, Congressional Research Service, Updated September 25, 2001, p 9.

¹² Federal Communications Commission. “Deployment of Advanced Telecommunication Capability: Second Report,” Washington, DC, August 2000, p. 6.

¹³ Kruger, p 14-15.

loans that promote telecommunications development and Internet access in FY2001.¹⁴ If this distributed approach to universal service is simply a necessary division of labor, then what seems to be missing is an effective organizational structure to manage it.

Congress should undertake a fundamental review of universal service. They should identify every federally financed or supported program that provides universal service funding and universal service-like funding, and consolidate them under a single umbrella agency. This agency should be tasked with effectively coordinating all universal service funding requests, and ensure that an equitable and nondiscriminatory eligibility standard for universal service recipients is developed and maintained. Since USAC is already performing this function on a subset of universal service activities, expanding their role to include all universal service activities would seem to be a natural and logical choice.

In addition to consolidating the programs that fund universal service under a single umbrella agency, I believe there is good reason to consolidate the universal service support mechanisms, i.e. the sources of dollars collected, or financed, for all universal service programs. We know that providers of telecommunications are required to make universal service contributions, and that they have chosen to recover their contributions from end-users. This is one source of universal service financing. Tax credits, targeted grants, and loans provided by federal programs are essentially “government services.” The federal government pays for these services through revenue obtained by taxing income, consumption and wealth, but the personal income tax is government’s main source of revenue.¹⁵ Therefore, taxation is the other source of universal service financing. The current model of dual financing sources is inherently unfair, because it forces many Americans to make multiple contributions to universal service. The current model of dual financing is also poorly structured, as it lacks the ability to establish unified funding and financing goals, to monitor and coordinate financing sources, and to recognize when funding and financing goals have been satisfied. A single source for universal service financing should be sought, but if this is not practical, the current system should be modified to correct the flaws that exist today.

CONCLUSION

I believe that the totality of universal service support that is currently financed, funded, and distributed offers ample evidence of the success of universal service programs, and signals the need to manage these programs more effectively.

I urge the Commission to consider rulemakings to address the current problems associated with providers’ recovery of universal service contributions from end-users.

I encourage the Joint Board and the Commission to give consideration to the following recommendations: 1) continually monitor the totality of the tax, surcharge and

¹⁴ Kruger, p 18-22.

¹⁵ Department of the Treasury, “The Economics of Taxation,” <http://www.treas.gov/opc/opc0013.html>, September 27, 2001.

fee burden on overall telecommunications costs; 2) consider the additional burden on this totality that will result from adding services to the list of core services eligible for universal service support; 3) define “just, reasonable and affordable rates” in order to establish a benchmark, against which the impact of future decisions and events can be measured. A relevant example of a future decision whose impact should be measured is whether to add services to the list of core services eligible for universal service support. A relevant example of a future event whose impact should be measured is a proposed quarterly universal service contribution factor.

Finally, I strongly encourage the Joint Board and the Commission to seek a Congressional review of universal service in the broader context of all federal programs that promote telecommunications development and Internet access, including the Commission’s, and the real cost of continuing a multiple agency approach to managing universal services with, or without, the addition of broadband services.

Respectfully submitted,

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